

STATE OF MICHIGAN
COURT OF APPEALS

LAWTON WILLISTON and MARTHA
WILLISTON,

UNPUBLISHED
February 14, 2006

Plaintiffs-Appellants,

v

GARROW-LOFTIS REALTORS and ROB
MOEN,

No. 257647
Genesee Circuit Court
LC No. 01-071708-CZ

Defendants-Appellees.

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal as of right a circuit court order granting defendants' motion for summary disposition with respect to their claim for silent fraud, pursuant to MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's decision to grant summary disposition de novo. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001). "A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support of a claim. The motion should be granted if the evidence demonstrates that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law." *Id.* (citations omitted).

A claim of silent fraud requires circumstances that establish a legal duty to make a disclosure; mere nondisclosure of information is insufficient. *Hord v Environmental Research Institute of Michigan (After Remand)*, 463 Mich 399, 412; 617 NW2d 543 (2000). With respect to a seller's liability, in *M & D, Inc v McConkey*, 231 Mich App 22, 35; 585 NW2d 33 (1998), a special panel of this Court recognized the potential liability of a seller for silent fraud where there is some type of representation that was false or misleading and a legal or equitable duty of disclosure. The Court noted that the latter may arise, for example, "where the buyers express a particularized concern or directly inquire of the seller" *Id.* at 33. However, a seller's real estate agent does not have a general duty to disclose material defects involving the property to a purchaser. *Id.* at 35, adopting *M & D, Inc v McConkey*, 226 Mich App 801, 813; 573 NW2d 281 (1997).

In the present case, the trial court correctly dismissed plaintiffs' silent fraud claim against the sellers' agent and the real estate agency. Plaintiffs do not argue that defendants made any

representations. The submitted evidence discloses that, at plaintiffs' request, their agent inquired about the presence of a pipe. The sellers responded to this inquiry, but defendant Moen did not respond. Because a claim of silent fraud requires circumstances that establish a legal duty to make a disclosure, *Hord, supra*, and real estate agents do not have a general duty to disclose material defects involving the property to a purchaser, *M& D, Inc, supra*, the trial court correctly determined that defendants were entitled to summary disposition with respect to plaintiffs' claim for silent fraud.

Affirmed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald